

FILED

August 6, 2019

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of the Denial of Contested
Case Hearing Requests and Issuance of
National Pollutant Discharge Elimination
System / State Disposal System Permit No.
MN0071013 for the Proposed Northmet
Project St. Louis County Hoyt Lakes and
Babbitt Minnesota.

O R D E R

A19-0112

A19-0118

A19-0124

Considered and decided by Cleary, Chief Judge; Rodenberg, Judge; and Reyes,
Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

These consolidated appeals are taken from an order by respondent Minnesota
Pollution Control Agency (MPCA) granting a National Pollutant Discharge Elimination
System/State Disposal System (NPDES/SDS) permit (the permit) to respondent Poly Met
Mining, Inc. (PolyMet) for its NorthMet project.

On June 25, 2019, this court issued an order granting relator WaterLegacy's motion
for a transfer to district court, pursuant to Minn. Stat. § 14.68 (2018), for hearing and
determination of alleged procedural irregularities related to the grant of the permit. That
order was based on undisputed extra-record evidence that (1) the MPCA and
Environmental Protection Agency departed from typical procedures in addressing the
permit, engaging in multiple telephone conferences and in-person meetings, some of which

are not reflected in the administrative record; (2) the EPA prepared written comments on the draft permit; (3) those written comments were never submitted to the MPCA and are not part of the administrative record; (4) instead the written comments were read to MPCA during an April 5, 2018 telephone call; and (5) notes taken during that call have not been included in the administrative record, and are believed to have been discarded. The order was also based on disputed extra-record evidence on the issues of whether (1) it was unusual for EPA not to submit written comments; and (2) the MPCA sought to keep the EPA's comments out of the public record. Based on this evidence, this court stayed these appeals and transferred the matter to Ramsey County District Court for the limited purpose of an evidentiary hearing and determination of the alleged irregularities in procedure. The hearing is to be held as soon as practicable, and the district court has scheduled a pre-hearing conference for August 7, 2019.

On July 2, 2019, relators filed a motion to stay the permit, arguing that such relief is warranted by the pendency of the district court proceedings and the imminence of construction on the NorthMet project. The MPCA and PolyMet oppose the motion.

Filing a certiorari appeal from an agency decision does not stay that decision, but the agency or this court may grant a stay. Minn. Stat. § 14.65 (2018). Generally, a party seeking a stay in a certiorari appeal must first request the stay from the agency, and this court reviews that decision for an abuse of discretion. *See* Minn. R. Civ. App. P. 115.03, subd. 2(b); 108.02, subd. 2; *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 143 (Minn. App. 2007). Relators did seek a stay of the permit from the MPCA in December 2018 and do

not challenge the denial of that stay request. Instead, the issue here is whether, in light of subsequent procedural developments in this court, it is appropriate to stay the permit.

When considering a motion to stay, relevant factors may include “whether the appeal raises substantial issues; injury to one or more parties absent a stay; and the public interest, which includes the effective administration of justice.” *Webster v. Hennepin County*, 891 N.W.2d 290, 293 (Minn. 2017). Effective administration of justice includes protecting appellate jurisdiction, avoiding multiple lawsuits, and preventing the defeat of ‘the objects of the writ of error.’” *Id.* (quoting *State v. N. Pac. Ry. Co.*, 22 N.W.2d 569, 574 (Minn. 1946)). A stay motion requires an individualized inquiry into the factors most relevant to the particular case. *Id.*

On the unique facts of this appeal, we conclude that staying the permit is warranted. A substantial issue has been raised as to the regularity of the MPCA’s proceedings in granting the permit, and this court has ordered the exceptional remedy of a transfer to district court to hear and determine those irregularities. And, although the parties dispute the effect of staying the permit on the project as a whole, relators have identified injuries to their environmental interests should the project proceed, and we are cognizant of the “difficulty of stopping a bureaucratic steam roller, once started.” *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 995 (8th Cir. 2011) (holding that “steam roller” effect was proper consideration in determining whether to grant injunctive relief against permit where allegation was that environmental harm would occur through inadequate foresight and deliberation). We are also persuaded that a stay will both promote the public interest and protect this court’s appellate jurisdiction. Accordingly, we conclude that it is

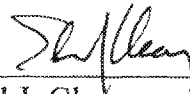
appropriate to stay the permit, at least through the pendency of the district court proceedings.

IT IS HEREBY ORDERED:

1. The motion to stay is granted.
2. The NorthMet NPDES/SDS permit MN0071013 is stayed pending further order of this court.

Dated: August 6, 2019

BY THE COURT



Edward J. Cleary
Chief Judge